

AD – 13
Ct No.16
13.07.2026
(SSS)

SAT 73 of 2025
with
CAN 1 of 2025

The Trust Estate Khimji Keshawji represented by
its trustees Sri Pravin K. Popat and Anr.

Vs.

M/s. Mahima Consultants (P) Ltd.

Mr. Suvadeep Sen,
Ms. Sucheta Das

.....For the appellants.

1. The present challenge has been preferred by the landlords/plaintiffs in a suit for eviction primarily on the ground of default in payment of rent and reasonable requirement under the provisions of Section 6 of the West Bengal Premises Tenancy Act, 1997. By the impugned judgments and decrees, both the Courts below dismissed the suit.

2. Learned counsel appearing for the appellants submits that both the Courts below substantially erred in law in refusing to grant decree on the ground of reasonable requirement, merely on the premise of a purported admission of the plaintiffs' witness in cross-examination to the effect that the plaintiffs own another property within the same

municipal limits as the suit property. Learned counsel argues that as per the settled legal position, the initial presumption is that of the landlords not having any suitable accommodation, which then has to be rebutted by the defendant. In the present case, there being no such rebuttal evidence, it is argued that the learned Courts below ought to have granted a decree of eviction on the ground of reasonable requirement.

3. It is secondly argued that as per the tenancy agreement, the rent fixed was merely on an *ad hoc* basis, with other commercial charges being included in the components of the total amount payable for occupation of the tenanted premises. It is argued that neither of the Courts below took into account such component of rent and went on to decide erroneously that there was no default on the part of the defendant/tenant in payment of the basic rent.

4. It is contended by the appellants that such omission gives rise to perversity, being contrary to the agreement between the parties and the evidence on record and as such, ought to afford a ground for admission of the second appeal.

5. Thirdly, learned counsel places reliance on sub-section (2) of Section 7 of the 1997 Act, which provides that upon adjudication under the said

provision of the quantum of rent payable, the rent then has to be paid to the landlords and not deposited in Court. Contrary thereto, the learned Trial Judge directed deposit in Court, which was then complied with by the defendant/respondent.

6. Learned counsel, in his usual fairness, submits that a revisional application was preferred against the said order, which was dismissed against which an SLP was filed, which also failed. However, it is argued that by framing issues on the question of default, the Trial Court reopened the said issue. It is submitted that the adjudication under Section 7(2) was merely tentative in nature, subject to the final adjudication of the suit. As such, the Courts below ought to have taken into account this component of the matter. It is further argued by learned counsel that the said question gives rise to a pure question of law and, as such, can be raised at any point of time, even for the first time in the second appeal.

7. However, we are unable to accept the contentions of the appellants.

8. Insofar as the reasonable requirement ground is concerned, Section 6(1)(d) of the 1997 Act stipulates that where the landlords or any person, for whose benefit the premises is held, reasonably

requires the premises for his own occupation and the landlord or such person is not in possession of *any suitable accommodation* within the same Municipal Corporation or Municipality or in any other area within 10 kms from such premises where the act extends, the same affords a ground of eviction.

9. Although the appellants seek to argue that in view of the deletion of the expression “reasonably” from the predecessor-statute to the 1997 Act, that is, the 1956 Act, to qualify the term “suitable”, the burden of proof on the landlord in that regard is now mitigated to a large extent, such deletion, in our opinion, does not mitigate the rigour on the landlord to prove the unsuitability of such alternative accommodation nonetheless.

10. Since the lack of suitable alternative accommodation is an inbuilt *sine qua non* of getting a decree on the ground of reasonable requirement as per the language of the statute itself, once the landlords admit in evidence that the landlords are the owners of another premises, it is for the landlords to show, either by local inspection or by other evidence, that the landlords do not have any suitable accommodation there. On the failure of the plaintiffs/appellants in the present case to do so, we do not find any legal

error in both the Courts below dismissing the suit on the ground of reasonable requirement.

11. Insofar as the quantum of rent is concerned, upon a determination under Section 7(2) of the 1997 Act, the same becomes conclusive insofar as the quantum is concerned. Contrary to the arguments of the appellants, the quantum of the rent, after determination under Section 7(2) of the 1997 Act, does not remain a tentative issue but attains finality.

12. The relevant issue framed by the Trial Court in this respect was not on the quantum of rent, but as to whether the defendant was a defaulter in payment of rent and all its components. Once it is decided under Section 7(2) as to what is the total quantum of rent payable (with or without any other components), the said question could not have been reopened of the suit. The only scope of adjudication on the issue of default which remained was whether the defendant/tenant complied with the order passed under Section 7(2).

13. Insofar as the other ground is concerned, regarding the mandate of Section 7(2) of the 1997 Act being that upon determination under Section 7(2), it is the landlord who has to be paid the amount so determined and not to be deposited in

the Court, we also cannot permit the appellants to raise such issue at this belated stage.

14. The question as to whether the payments were actually made to the landlords or the Court is not a pure question of law but a mixed question of fact and law. Since the plaintiffs/appellants preferred a revisional application against the determination under Section 7(2), which was dismissed, thereby affirming the order of the Trial Court, against there was no interference by the Hon'ble Supreme Court in the Special Leave Petition challenging the same, the self-same issue cannot be permitted to be reopened at any subsequent stage. The appellants are barred by the principle of constructive *res judicata*, if not *res judicata*, from raising afresh the question of validity of the deposits made by the landlords in terms of the order of the Trial Court under Section 7(2), in view of the said order having attained finality.

15. That apart, the rider in Section 7(2) which requires the amount to be paid to the landlords cannot be construed to be so mandatory that it would vitiate the compliance by the tenant of the order passed by the Court under Section 7(2), even if the Court directs the amount to be deposited in Court. If such component of the

Section 7(2) order was challenged and varied/reversed in time, the tenant would have the opportunity to pay the amount payable directly to the landlord. In the present instance, such question was never raised by the landlords during the pendency of the suit, thereby depriving the tenant of the opportunity to rectify error, if any, by directly making the payments to the landlords. However, the tenant cannot be faulted at this stage only for complying with the order of the Trial Court.

16. From the four corners of the judgment of the Trial Court or the First Appellate Court, we do not find the specific issue of the deposits being bad on such count having been raised by the landlords/plaintiffs at all.

17. Thus, permitting the plaintiffs/appellants to do so at this stage would be a travesty of justice.

18. In view of the above discussions, we do not find any substantial question of law raised in the present second appeal.

19. Accordingly, SAT 73 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

20. Consequentially, CAN 1 of 2025 is also disposed of.

21. No order as to costs.

22. Urgent certified copies of this order, if applied for, be supplied to the parties upon compliance of requisite formalities.

23. The certified copy of the impugned decree be sent down for effecting necessary corrections.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)